which no assets have come to his hands, within the meaning of section 29 of the act. This is the interpretation given to such expression "no assets" by the Justices of the Supreme Court.

Form No. 35 is headed "assignee's return where there are no assets;" and that form consists merely of the oath of the assignee that he has "neither received nor paid any moneys on account of the estate."

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF MAINE.[2]

AGENCY.

Order by Principal to pay Creditor.—If a debtor, having funds in the hands of his agent, verbally orders him to pay a creditor, and the agent promises to execute the order, and the creditor accepts and relies upon the agent's promise, the debtor's power to control so much of the funds as is necessary to redeem such promise is gone: *Goodwin* v. *Bowden*, 54 Me.

In such case, the agent's promise becomes an original undertaking, and the funds in his hands are a sufficient consideration for his engagement: *Id.*

ASSUMPSIT.

For Proceeds of Property tortiously taken and sold.—The proceeds of unbranded pressed hay, tortiously taken and sold, or wrongfully sold by one not the owner, but lawfully possessed thereof, may be recovered by the owner in *assumpsit* for money had and received against such tortious vendor: *Foye* v. *Southard*, 54 Me.

ATTACHMENT.

Validity against subsequent Purchaser.—An attachment of real estate, made on a writ specifying that "the claims intended to be proved under the foregoing money counts, are money obtained of plaintiffs by defendant, on notes" specifically described, may be valid as against a subsequent purchaser, although neither of the notes mentioned was due at the time the writ issued: *Jordan* v. *Keene*, 54 Me.

BILLS AND NOTES.

Waiver of Notice.—A waiver of demand and notice may be proved by parol, or may be inferred from acts and circumstances, in an action against the indorser of a negotiable promissory note: *Keyes* v. *Winter*, 54 Me.

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[1] From J. W. Wallace, Esq., Reporter; to appear in Vol. 6 of his Reports.

[2] From W. W. Virgin, Esq., Reporter; to appear in 54 Maine Rep.

Defendant, applying to the plaintiff for a loan of money, was informed by the latter that if he would get, and indorse in blank, defendant's brother's note, and give his word upon honor that if his brother did not pay it he would, he would loan him the money. Defendant replied that he was willing to give his word, and that he expected to be holden if he got the money; adding, that he desired the plaintiff to wait as long as he could for his pay, and, if his brother did not pay, he (defendant) would. In an action upon such a note, given the next day—*Held*, that there was a waiver of demand and notice: *Id.*

Negotiability.—A note payable to an insurance company or order for a sum certain, "and such additional premium as may become due on" a policy named, and at a time therein specified, is not negotiable: *Marrett* v. *Equitable Ins. Co.*, 54 Me.

Common Carrier.

Damages for Delay in Transportation.—In an action against a common carrier for damages in not seasonably transporting flour, the decline in its market value between the time when it actually arrived at its place of destination, and when, in the exercise of proper diligence on the part of the carrier, it might have so arrived, is a material element proper for the consideration of the jury in ascertaining the actual damages sustained by the shipper: *Weston* v. *Grand Trunk Railway Co.*, 54 Me.

Confederate States. See *Insurance.*

Constitutional Law.

Right of Free Locomotion from State to State.—A special tax on railroad and stage companies for every passenger carried out of the state by them, is a tax on the passenger for the privilege of passing through the state by the ordinary modes of travel, and is not a simple tax on the business of the companies: *Crandall* v. *State of Nevada*, 6 Wall.

Such a tax imposed by a state is not in conflict with that provision of the Federal Constitution, which forbids a state to lay a duty on exports: *Id.*

The power granted to Congress to regulate commerce with foreign nations and among the states, includes subjects of legislation which are necessarily of a national character, and therefore exclusively within the control of Congress: *Id.*

But it also includes matters of a character merely local in their operation, as the regulation of port pilots, the authorization of bridges over navigable streams, and perhaps others, and upon this class of subjects the state may legislate in the absence of any such legislation by Congress: *Id.*

If the tax on passengers when carried out of the state be called a regulation of commerce, it belongs to the latter class; and there being no legislation of Congress on the same subject, the statute will not be void as a regulation of commerce: *Id.*

The United States has a right to require the service of its citizens at the seat of Federal government, in all executive, legislative, and judicial departments; and at all the points in the several states where the functions of government are to be performed: *Id.*

By virtue of its power to make war and to suppress insurrection, the government has a right to transport troops through all parts of the Union by the usual and most expeditious modes of transportation: *Id.*

The citizens of the United States have the correlative right to approach the great departments of the government, the ports of entry through which commerce is conducted, and the various Federal offices in the states: *Id.*

The taxing power being in its nature unlimited over the subjects within its control, would enable the state governments to destroy the above-mentioned rights of the Federal government and of its citizens, if the right of transit through the states by railroad and other ordinary modes of travel were one of the legitimate objects of state taxation: *Id.*

The existence of such a power in the states is, therefore, inconsistent with objects for which the Federal government was established, and with rights conferred on that government and on the people. An exercise of such a power is accordingly void: *Id.*

CONTRACT.

Liquidated Damages.—In the event of his failure to faithfully "do and perform each and every condition and stipulation expressed in" a certain license and agreement, for carrying on a lumbering operation upon the plaintiff's land, the defendant bound himself in writing to the plaintiff, "in the full and liquidated sum of $1000, over and above the actual damages which the plaintiff might sustain by reason of such nonperformance. In an action to recover the $1000—*Held*, that the sum named was liquidated damages, and recoverable: *Dwinel* v. *Brown*, 54 Me.

COURTS.

Jurisdiction—Political Questions as distinguished from Judicial.—A bill in equity filed by one of the United States calling upon the court to enjoin the secretary of war and other officers who represent the executive authority of the United States from carrying into execution certain Acts of Congress, on the ground that such execution would annul and totally abolish the existing state government of the state, and establish another and different one in its place—in other words, would overthrow and destroy the corporate existence of the state by depriving it of all the means and instrumentalities whereby its existence might and otherwise would be maintained—calls for a judgment upon a political question, and will therefore not be entertained: *State of Georgia* v. *Stanton*, 6 Wall.

This character of the bill is not changed by the fact that, in setting forth the political rights sought to be protected, the bill avers that the state has real and personal property (as for example, the public buildings, &c.), of the enjoyment of which, by the destruction of its corporate existence, the state will be deprived; such averment not being the substantive ground of the relief sought: *Id.*

DAMAGES. See *Common Carrier—Contract.*

For Breach of Agreement to Reconvey Real Estate.—The plaintiff conveyed her farm to one W., receiving back a writing obligatory to reconvey upon the conditions therein specified, which obligation she assigned to the defendant in consideration of his oral agreement to redeem and

take a deed of the farm from W., and then execute and deliver her a similar writing to reconvey to her whenever, within three years, she should pay him whatever should be reasonably due for services and expenditures. The defendant redeemed and took a deed of the farm from W., but refused to execute and deliver said obligation, and conveyed away the farm to D. In *assumpsit*, for breach of the agreement—*Held*, that, under the general issue, the damages were the actual value of the farm, after deducting the amount actually paid by the defendant to redeem, and such other sums paid out and for services rendered by him at her request, as she had agreed to allow: *Lawrence* v. *Chase*, 54 Me.

Deed.

Delivery.—A deed executed and left by the grantor with a third person, by request and direction of the grantee, is a sufficient delivery: *Hatch* v. *Bates*, 54 Me.

No one but a creditor of the grantor can avail himself of the objection that a deed was given without consideration: *Id.*

Merger.—Where the title of two adjoining closes becomes united in one person, all subordinate rights and easements are extinguished: *Warren* v. *Blake*, 54 Me.

Description of Lands—Metes and Bounds—Map or Plan.—Where an owner of land surveyed and laid out into lots, with a street represented upon the recorded plan as running east and west between the two ranges of lots, simultaneously conveyed the south range to the defendant, commencing at the west end of the "southerly line of the street as laid down on" the plan, thence south and east, certain specified distances, thence north, up a specified stream, "to a point where a line drawn from the point of beginning, at right angles with" the first line, "would strike said stream, thence westerly, at right angles with" the first line, "to the place of beginning;" and the north range to the plaintiff, commencing at the west end of the "southerly line of" the street, "according to the plan, thence easterly by the line of said street, as laid down on said plan, to the" stream, "thence north and west" certain specified distances, "thence southerly," by a specified line, to the place of beginning: *Held*, that the fee in all of the land covered by the street passed to the latter and not to the former: *Warren* v. *Blake*, 54 Me.

The clauses in the deed to the grantor of the defendant, "with the buildings thereon," and "to have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging," will not pass the fee to so much of said street as is covered by the north end of the brick stable erected on the south range of lots, nor to the passage-way thereto, subject to an easement, to the plaintiff to pass thereon to his pasture: *Id.*

If the owner of two adjoining closes, over one of which a convenient passage-way exists for the benefit of the other, simultaneously conveys them to two different purchasers, the right to use the passage-way will not pass as an easement or appurtenance to the purchaser of the latter close, unless such use be a matter of strict necessity: *Id.*

Timber cut may pass.—Timber trees, cut down and lying at full length upon the ground where they grew, will pass by a deed of the land: *Brackett* v. *Goddard*, 54 Me.

Consideration—Subsequent Creditors.—A conveyance made without consideration, and for the purpose of defrauding creditors, is void as well against subsequent as prior creditors of the grantor: *Marston* v. *Marston*, 54 Me.

Divorce.

Jurisdiction—Non-resident Parties.—The Supreme Judicial Court of this state cannot divorce from the bonds of matrimony a husband and wife who were married without the state, and who since their intermarriage have only been in it for a few days on a visit, and never as residents: *Calef* v. *Calef*, 54 Me.

Easement. See *Deed.*

Equity.

Answer not complete until Filed.—An answer to a bill in equity, complete in every respect, cannot be treated as an answer until the party has filed it: *Giles* v. *Eaton*, 54 Me.

If he died before filing the same, it cannot be filed as an answer by the solicitor: *Id.*

His executors may, however, consider how far and to what extent they can properly incorporate into their answer the facts set forth in the unfiled answer: *Id.*

Evidence. See *Husband and Wife.*

Date of Promissory Note—Illegible Writing—Parol Evidence.—Where it is necessary to determine the date of a promissory note in suit, and offered in evidence, and the name of the month is so inartificially written that, upon inspection, the presiding judge cannot determine whether it should be read June or January, extraneous evidence is admissible to show the true date: *Fenderson* v. *Owen*, 54 Me.

And the question is a proper one to be submitted to a jury: *Id.*

Executors and Administrators.

Foreign Executor no authority to act.—An executor, though qualified as such by the laws of another state, has no authority by reason of such qualification to act as such in this: *Gilman* v. *Gilman*, 54 Me.

De son tort.—In trover by the rightful administrator of an intestate's estate to recover the value of the goods and effects of the estate taken by an executor *de son tort*, the defendant cannot file an account in set-off for the intestate's debts, paid by him since the decease: *Tobey* v. *Miller*, 54 Me.

But, by virtue of R. S., c. 64, § 32, he may "retain" whatever sums actually paid him, which, if withdrawn from his hands, the rightful administrator or executor would be compelled to pay: *Id.*

Husband and Wife.

Admissions as Evidence of Marriage, for Collateral Purposes.—Admissions of marriage, by the plaintiff, are competent evidence in support of a plea in abatement for the nonjoinder of her husband: *Laughlin* v. *Eaton*, 54 Me.

Suit by Married Woman.—The well-established doctrine of the common law, that a married woman cannot sue alone for malicious prosecution, has not been changed by R. S., c. 61: *Id.*

She cannot sue alone in such action, although her husband went, several years since, to California, but is alive, keeps up a correspondence, and frequently sends her funds: *Id.*

INSURANCE.

Government de facto, as Distinguished from lawful Government—Insurance—Capture.—A taking of a vessel by the naval forces of a now extinct rebellious confederation whose authority was unlawful, and whose proceedings in overthrowing the former governments were wholly illegal and void, and which confederation has never been recognised as one of the family of nations, is a "capture" within the meaning of a warranty on a policy of insurance having a marginal warranty "free from loss or expense by capture," if such rebellious confederation was at the time sufficiently in possession of the attributes of government to be regarded as in fact the ruling or supreme power of the country over which its pretended jurisdiction extended: *Mauran* v. *Insurance Co.*, 6 Wall.

Accordingly a seizure by a vessel of the late so-called Confederate States of America, for their benefit, was a capture within the terms of such a warranty: *Id.*

Clause in Policy that no action shall be maintained without previous offer to refer the Claim to Referee.—In an action upon a policy of marine insurance, stipulating that in case any dispute shall arise in relation to any alleged loss, it shall be referred to and determined by referees to be mutually chosen by the parties; that no policy holder shall maintain any action thereon until he shall have offered to submit his claim to such reference; and that in case any suit shall be commenced without such offer, the claim shall be released and discharged, and the company exempted from all liability under it: *Held*, such stipulations are void: *Stephenson* v. *Piscataqua F. and M. Ins. Co.*, 54 Me.

Such a policy, causing "S. & Co. to be insured, for whom it concerns, in the sum of $700, on schooner 'Arbutus,' of," &c., "at and from," &c., "the above to cover their claim for supplies furnished said vessel:" *Held*, 1. That the policy does not apply to the supplies only; and 2. That any conversation between the owner and the plaintiffs tending to show authority from the former to the latter to take out this policy is admissible: *Id.*

And when the policy provides that the defendant company is, in case of prior insurance, answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk: *Held*, that the jury, if they found for the plaintiffs, should ascertain the value of the schooner at the time of the loss; and if they should find the whole amount of insurance did not exceed such value, and the loss a total loss, they might assess as damages the amount insured by the defendants, with interest from the time it was payable: *Id.*

In case of a sale from necessity by the master, the salvage belongs to the insurers; and the assured is entitled to recover the full amount of his claim, irrespective of the amount of salvage received by the insurers: *Id.*

An alleged copy of a survey, not made by order of a court of admiralty, or under the sanction of an oath, is not admissible in evidence, though certified and stamped by the American consul at the port where the survey was made: *Id.*

A policy of marine insurance covers not only losses that result from injuries caused by extraordinary perils of the sea which become immediately known, but such also as result from latent injuries: *Id.*

The authority of a master to sell the vessel and cargo in case of marine disaster, rests exclusively upon the ground of necessity, the burden being upon the assured: *Id.*

Life Insurance—Suicide by Insane Person.—The condition in a policy of life insurance, "that in case the insured shall die by his own hand, or in consequence of a duel, or the violation of any state, national, or provincial law, or by the hands of justice, this policy shall be null, void, and of no effect," does not include suicide by an insane man in a fit of insanity: *Easterbrook* v. *Union M. Life Ins. Co.*, 54 Me.

Lease.

Perpetual Right of Renewal—Fee of Landlord not passed by such a Contract.—A lease for a term of years, conditioned for the payment of an annual rent, with a perpetual right of renewal, does not divest the lessor of his fee in the premises: *Page* v. *Esty*, 54 Me.

A conveyance of the leased premises by the lessor makes the grantee the landlord of the lessee, with the right to possession upon a forfeiture for breach of the conditions of the lease: *Id.*

A surrender of the lease, after such conveyance, to the original lessor, gives him no interest in the premises; and if the lease is cancelled, the grantee holds the premises discharged of the encumbrance: *Id.*

Libel.

Words not Actionable.—Innuendo.—Words in a declaration of libel, not in themselves libellous, are not enlarged or extended by an innuendo: *Emery* v. *Prescott*, 54 Me.

The words, to "carry the" plaintiff "back to Thomaston, where he came from," are not of themselves libellous: *Id.*

Nor does the innuendo that Thomaston means "the state prison situated in the town of Thomaston, which place is known by the name of the town," unexplained by introductory matter, make the words actionable, which, without innuendo, would not be libellous: *Id.*

Limitations, Statute of.

Partial Payment.—The partial payment of an account, made within six years, and appropriated toward the payment of the account as a whole, and not to any one or more of its particular items, will take the account out of the Statute of Limitations: *Dyer* v. *Walker*, 54 Me.

Misnomer.

Upon the issue raised by a replication to a plea of misnomer, that the defendant was known as well by the name in the indictment as by that in the plea, the presiding judge, after stating to the jury the question at issue, illustrated it as follows:—"If a stranger should go * * where the

defendant is known, and inquire for the house of" the person named in the indictment, "would those of whom he inquired recognise the man inquired for as well by that name as by the name used in the plea?" "If so, the issue is made out for the government:" *Held*, the illustration is unexceptionable: *State* v. *Dresser*, 54 Me.

NEGLIGENCE. See *Nuisance.*

NUISANCE.

Excavation in Highway.—If a private citizen be guilty of a nuisance in making an excavation in a public highway, he will be responsible for injuries arising therefrom during its continuance: *Portland* v. *Richardson*, 54 Me.

OFFICE AND OFFICER.

Tenure of Office—Construction of Penal Statutes.—An office is a public station or employment conferred by the government, and embraces the ideas of tenure, duration, emolument, and duties: *United States* v. *Hartwell*, 6 Wall.

Accordingly a person in the public service of the United States, appointed pursuant to statute authorizing an assistant treasurer of the United States to appoint a *clerk* with a salary prescribed, whose own tenure of place will not be affected by the vacation of office by his superior, and whose duties (though such as his superior in office should prescribe) are continuing and permanent, is an "officer" within the meaning of the Sub Treasury Act of August 6th 1846 (9 Stat. at Large 59), and, as such, subject to the penalties prescribed in it for the misconduct of officers: *Id.*

The terms employed in the 16th section of that act to designate the persons made liable under it, are not restrained and limited to principal officers: *Id.*

The admitted rule that penal statutes are to be strictly construed is not violated by allowi g their words to have full meaning, or even the more extended of two meanings, where such construction best harmonizes with the context, and most fully promotes the policy and objects of the legislature: *Id.*

The penal sanctions of the 3d section of the Act of June 14th 1866, to regulate and secure the safe-keeping of public money, &c. (14 Stat. at Large 65), is confined to officers of banks and banking associations: *Id.*

Compensation for Expenses.—An officer, holding funds arising from the sale of goods attached, may deduct a reasonable compensation for the expense of keeping and selling the same, before applying the balance to the satisfaction of the execution, although the full amount of his charges is not taxed and allowed in the plaintiff's bill of costs: *Baldwin* v. *Hatch*, 54 Me.

The burden of paying such charges is upon the debtor and not upon the creditor: *Id.*

An officer is not bound by the taxation of his fees in a suit in which he is not a party: *Id.*

Aliter with a party: *Id.*

PARTNERSHIP.

Purchase by one Partner of the Interest of another with bond to indemnify.—If the plaintiff (one of the members of a firm including the defendant and others, each of whom purchased and held lands for the general objects of the copartnership) sell his entire interest in the partnership property, including the lands, to the defendant, taking back a bond reciting the sale, and conditioned to "save the plaintiff harmless from all the liabilities of said firm and growing out of said firm;" a judgment rendered against all the members of the firm, on a petition for partition of one not a member thereof, commenced before, but determined after such sale, and defended by an attorney retained by the defendant, in the name of all the members, is covered by the bond; and if the plaintiff pay such judgment, he will be entitled to recover the amount thus paid, in an action upon said bond: *Bunton* v. *Dunn*, 54 Me.

PAYMENT.

Delivery of Money by Debtor with specific Instructions as to its Application— Violation of Instructions by Creditor.—If the defendant, being cashier of a bank, receive, at the banking-house, a certain sum of money from the plaintiff, with instructions to appropriate it to the payment of a specific note signed by the latter, then undue, and he apply the same upon another note signed by the plaintiff, both of which are payable to said bank, and the plaintiff do not subsequently acquiesce in such application, the defendant will be personally liable in an action for money had and received to refund the sum thus received, with interest from the time when received: *Norton* v. *Kidder*, 54 Me.

And whether the defendant applied the money to his own use or to that of the bank is immaterial: *Id.*

The facts do not constitute a voluntary or involuntary payment: *Id.*

REPLEVIN.

Amount of Bond—Action on.—A replevin bond, in less than "double the value of the goods to be replevied," is good at common law: *Tuck* v. *Moses*, 54 Me.

If a plaintiff in replevin neglects to comply with the judgment for return, following an abatement of the writ, because of such defective bond, the defendant in replevin may maintain an action thereon, notwithstanding the writ was abated upon his motion: *Id.*

Against Express Company for not delivering Goods.—The owner of goods transported by an express company may, after tender of the sum legally chargeable against such goods, and after demand and refusal, maintain replevin therefor against the agent of such company having the care of the goods in one of the company's places of deposit: *Eveleth* v. *Blossom*, 54 Me.

When maintainable.—Replevin is maintainable only against a person having possession or control of the chattels to be replevied: *Ramsdell* v. *Buswell*, 54 Me.

SURETY.

Indulgence of Principal by Creditor with consent of Surety.—Where, in an action on a promissory note, by the payee against the principal and

surety, the plaintiff testified, and the surety in cross-examination admitted, that the latter requested the plaintiff "to wait on the principal as long as he could;" and subsequently the plaintiff gave the principal a written extension for one year: *Held*, that whether the delay granted was by the request or with the consent of the surety was a fact for the jury: *Treat* v. *Smith*, 54 Me.

A valid agreement for delay between the principal debtor and creditor will not discharge the surety, if made with his consent and approval: *Id.*

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